draft. An equitable doctrine should never be allowed to work inequitably. Therefore the plaintiff should be required to hold in trust for the bank the money in excess of the sum that he has paid to the bank. *Cf. Jordan* v. *Adams*, 7 Ark. 348; *Kendrick* v. *Forney*, 22 Gratt. (Va.) 748. To cases where an assignment or novation can be spelled out this reasoning is of course inapplicable. The principal case should be carefully distinguished from cases where the defendant, though at fault, has not been unjustly enriched. *German Bank* v. *United States*, 148 U. S. 573, 13 Sup. Ct. 702.

TAXATION — PARTICULAR FORMS OF TAXATION — INHERITANCE TAX PAID IN TWO STATES. — A testator, domiciled in Illinois, left personal property in California. After probate of the will in Illinois, an administrator with the will annexed was appointed by a California court, which approved his payment of legacies and California inheritance taxes on all the property in California, and ordered him to turn over the residuum of the property to the Illinois residuary trustee named in the will. This having been done, the question then arose in Illinois whether it would be giving full faith to the proceedings in California if the trustee were required to pay the Illinois inheritance tax. *Held*, that the tax might be imposed only on legacies paid out by him. *People* v. *Union Trust Co.*, 99 N. E. 377 (Ill.).

By the overwhelming weight of authority, an inheritance tax is not one on the property affected, but on the privilege of succeeding to the inheritance. *In re Macky's Estate*, 46 Col. 79, 102 Pac. 1075; *In re Stone's Estate*, 132 Ia. 136, 109 N. W. 455. *Contra, Estate of Cope*, 191 Pa. St. 1. It is not a property tax even though made a lien on property, or though the statute on its face levies a tax on property. *State ex rel. Schwartz* v. *Ferris*, 53 Oh. St. 314, 41 N. E. 579; *Gelsthorpe* v. *Furnell*, 20 Mont. 299. The reason ordinarily assigned is that the privilege of acquiring property by will or by succession is a right created and regulated by the state. *Minot* v. *Winthrop*, 162 Mass. 113, 38 N. E. 512; *Magoun* v. *Illinois Trust & Savings Bank*, 170 U. S. 283, 18 Sup. Ct. 594. But see *Nunnemacher* v. *State*, 129 Wis. 190, 198, 108 N. W. 627, 628. It follows that the legislature may impose burdens in the form of taxes on this privilege unrestricted by the constitutional provisions relating to the taxation of property as such. *In re Fox's Estate*, 154 Mich. 5, 117 N. W. 558; *Booth's Executor* v. *Commonwealth*, 130 Ky. 111, 113 S. W. 61. So also the tax may be imposed on the transfer of securities which as property are not in themselves within the taxing power of the state, as, for example, United States bonds or exempted state and municipal bonds. *Succession of Levy*, 115 La. 377, 39 So. 37; *Succession of Kohn*, 115 La. 71, 38 So. 898. If the tax had been on the property itself, the approved administration in California would have precluded any further inheritance tax in Illinois. But being regarded as a tax on the legatees resulting in a debt due to the state, the matter did not fall within the purview of the first administration.

TROVER AND CONVERSION — WHO MAY SUE — BAILEE AT WILL FOR CONVERSION OCCURRING AFTER LOSS OF POSSESSION. — A watch was stolen from the plaintiff, a bailee at will, and pawned with the defendant, who refused to give it up on demand by the plaintiff. After the theft but before the demand and refusal the bailor at will terminated the bailment. *Held*, that the plaintiff has no cause of action. *Landry* v. *Mandelstam*, 84 Atl. 642 (Me.).

Bare possession, even adverse, at the time of the conversion, is sufficient to support an action of trover. *Vining* v. *Baker*, 53 Me. 544; *McAvoy* v. *Medina*, 11 Allen (Mass.) 548. See *Buckley* v. *Gross*, 3 B. & S. 566, 574. But in the principal case the plaintiff must depend on some right to possession when the watch was refused. A finder, having a title good against all the world but

the original owner, probably retains a right of possession sufficient to maintain trover for a conversion even after he loses the article. See *Buckley* v. *Gross*, 32 L. J. Q. B. 129, 131; SALMOND, TORTS, 2 ed., 320, 321. But see CLERK & LINDSELL, TORTS, 270. Perhaps it would also be expedient to give an adverse possessor similar rights. But *cf.* *Buckley* v. *Gross*, 32 L. J. Q. B. 129, 131. The expiration of a fixed term of bailment, however, or an express notice of the termination of a bailment at will, even where the article has been lost, would seem to terminate the right of possession of the bailee. A right of adverse possession, being in its essence contrary to the intention of the owner from the start, could hardly be cut off by a mere expression of intention. But a rightful bailee who has lost possession of the bailed article could not after his term set up an adverse right without actual possession.

WILLS — CONSTRUCTION — ESTATES BY IMPLICATION. — A will directed the executrix to sell the testator's land and to purchase bonds with the proceeds, the interest from the bonds to be applied to the maintenance of the testator's children. *Held*, that legal title to the land vests in the executrix. *In re Hazelton*, 137 N. Y. Supp. 937 (Surr. Ct., Kings County).

Legal title to land may pass under a will by an implied devise where it is necessary that the executors should have a legal estate for the most efficient performance of the duties placed upon them by the will. See 1 WILLIAMS, EXECUTORS, 10 ed., 489. Thus where executors are directed to pay an annuity out of land, legal title to the land passes to them by implication. *Oates* v. *Cooke*, 3 Burr. 1684; *Anthony* v. *Rees*, 2 Cromp. & J. 75. The same is true where the executors are instructed to collect and pay over rents. *In re Fisher*, L. R. 13 Ir. 546; *Morse* v. *Morse*, 85 N. Y. 53. A devise in such a case is not implied, however, if it will offend some rule of law. *Post* v. *Hover*, 33 N. Y. 593. Where a will provides that the executors shall sell land, they take merely a power of sale, since a power is sufficient to enable them fully to perform that duty. *Doe* v. *Shotter*, 8 A. & E. 905. See 1 SUGDEN, POWERS, 7 ed., 129–131. There seems no reason why the result should be different when, as here, the executors are instructed to invest the proceeds of the sale. *Greenough* v. *Welles*, 10 Cush. (Mass.) 571; *Hope* v. *Johnson*, 2 Yerg. (Tenn.) 123.

WILLS — REVOCATION OF CODICIL BY TEARING — DISPOSITION OF REVOKED LEGACY. — In a codicil to a will in which the defendants were residuary legatees, the testatrix bequeathed a sum of money to a legatee not mentioned in the will. Later she destroyed the codicil with no intention of thereby revoking the will. *Held*, that the legacy contained in the destroyed codicil should not go to the heirs-at-law but should become part of the residuary estate. *Osburn* v. *Rochester Trust & Safe Deposit Co.*, 152 N. Y. App. Div. 235.

Although for many purposes a codicil may republish a will, it clearly does not so incorporate the will into itself that a destruction of the codicil destroys both the will and the codicil. See *Estate of McCauley*, 138 Cal. 432, 434, 71 Pac. 512, 513; *Appeal of Carl*, 106 Pa. St. 635, 641. And since a will and its codicils are construed in law as one instrument the destruction of a codicil would seem to present a situation similar to the cancelation of a single clause of a will in jurisdictions allowing partial revocation by physical act. But what disposition to make of a specific legacy after a non-testamentary revocation thereof is a mooted point. Some courts urge that to allow the legacy to become part of the residuum would in substance be effecting a different testamentary disposition without the formalities required by statute. *Miles's Appeal*, 68 Conn. 237, 36 Atl. 39. *Cf.* *Waln's Estate*, 156 Pa. St. 194, 27 Atl. 59; *Creswell* v. *Cheslyn*, 2 Eden 123. But the better reasoned cases reach the opposite result. *Bigelow* v. *Gillott*, 123 Mass. 102; *Collard* v. *Collard*, 67 Atl.